

REFERENCE: LRCiv 5.5

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

(Rule Number/Section)

Aaron A. Rivera,

No. 4:18 CV 18-00053-TUC-FRZ

Plaintiff,

Federal Bureau of Prisons, et al.,

Defendants

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JUN 13 2018	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

MOTION TO VACATE COURT'S ORDER FILED MAY 11, 2018

The Plaintiff, Aaron A. Rivera, respectfully requests that the Court vacate the Order that the Court filed in this case on May 11, 2018 (hereinafter "the Order"). (See Attachment 1, Order No. CV-18-00053-TUC-FRZ). This Order should be vacated because it is based on a material factual mistake and error; and as a result, there is no factual or legal basis for the May 11, 2018 Order.

The May 11, 2018 Order correctly states that the Plaintiff:

1. While he was a federal prisoner, filed a pro se civil rights Complaint pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* (Case Number 4:18-CV-00053-FRZ-PSOT);
2. Filed an Application to Proceed In Forma Pauperis based on the fact that he was a federal prisoner (hereinafter "the Application"); and
3. Filed a Notice of Change of Address, on February 26, 2017, indicating he was no longer in federal prison and he was now residing in a halfway house in Lubbock, Texas.¹ (See May 11, 2018 Order, pg. 1).

¹ The May 1, 2018 Order states that the Notice of Change of Address was filed on February 26, 2017. This date is in error and was probably the result of a

Based on the February 26, 2018 Notice of Change of Address, the May 11, 2018 Order erroneously concluded that the Plaintiff was no longer a federal prisoner and that;

1. After the Plaintiff filed his Application to Proceed In Forma Pauperis for use by prisoners, he was released for federal prison;
2. Since he was no longer a federal prisoner on February 26, 2018 [or on the date of the Order], the Court denied as moot the Plaintiff's Application to Proceed In Forma Pauperis used by prisoners; and
3. The Plaintiff must either pay the \$350 filing fee and \$50 administrative fee or file a non-prisoner Application to Proceed in District Court Without Prepaying Fees or Costs. (See the Order pg. 1 and 2)

Federal Bureau of Prisons records establish and the Plaintiff would testify under oath that:

1. The Plaintiff was released from federal prison on February 14, 2018 and was transferred to a halfway house in Lubbock, TX;
2. Shortly thereafter, the Plaintiff was found to be in violation of his probation and of Rules for the halfway house and the Plaintiff was transferred back to the federal prison system on March 13, 2018.
3. Since March 13, 2018 to the present, the Plaintiff has been a federal prisoner at a number of federal prisons (e.g.; the Oklahoma Federal Transfer Center. Victorville, Terry County Law Enforcement Center (Brownsville, TX) and Beaumont, Texas Medium FCI;
4. On May 11, 2018, the date the Court filed the Order, the Plaintiff was a federal; prisoner at the federal facility in Brownsville, TX'; and
5. The Plaintiff's projected Release Date from federal prison is August 3, 2018 (See Federal Bureau of Prisons records at Attachments 1 and 2).

typographical error. On February 26, 2017, the Plaintiff was still in federal prison. The Notice of Change of Address was actually filed on February 26, 2018 (not 2017), when the Plaintiff was residing in a halfway house in Lubbock.

Based on the February 26, 2018 Notice of Change of Address, the Court erroneously concluded that the Plaintiff was not a federal prisoner between February 26, 2018 and May 11, 2018 and, therefore, he was not eligible for the Application To Proceed In Forma Pauperis used by prisoners. When the Court filed the May 11, 2018 Order, it was not aware that:

1. The Plaintiff became a federal prisoner again on March 12, 2018;
2. The Plaintiff has been a federal prisoner from March 12, 2018 to the present; and
3. The Plaintiff was a federal prisoner at the Brownsville federal prison, on May 11, 2018; the date the Court filed the Order.

In summary, the sole basis of the May 11, 2018 Order was the finding that the Plaintiff was no longer a federal prisoner and, therefore he was no longer eligible too have the Court approve his Application To Proceed In Forma Pauperis. Since the factual basis for the Order was inaccurate and false, and in fact, the Plaintiff was a federal prisoner on May 11, 2018 (the date of the Order) and the Plaintiff was eligible to file the Application and the Court should have that Application.

As demonstrated above, there is no factual, legal or other basis or rationale for the May 11, 2018 Order, and the Plaintiff respectfully requests that this Order be vacated and the Court approve the Plaintiff's Application To Proceed In Forma Pauperis used by prisoners.

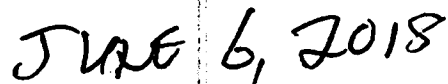
The Plaintiff's current mailing address is:

**Aaron A. Rivera
Reg. No. 15621-380
Beaumont Medium FCI
P.O. Box 26035
Beaumont, TX 77720**

Submitted by:



**Paul K. Mancini, Esq.
Pro Bono Attorney for Plaintiff**



Date Signed

**15102 Oak Loft St
San Antonio, TX 78232**

CELL No. 210-508-1196

Member of Bars:

Texas Bar Number: 788931

Washington, DC Bar Number: 424337

Case: 4:18-cv-00053-FRZ-PSOT Document #: 9-1 Date Filed: 05/11/2018 Page 1 of 8

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Aaron A. Rivera,

Plaintiff,

v.

Federal Bureau of Prisons, et al.,
Defendants.

No. CV 18-00053-TUC-FRZ

ORDER

Plaintiff Aaron A. Rivera, who was formerly confined in the Federal Correctional Institution in Adelanto, California, has filed a pro se civil rights Complaint pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and an Application to Proceed In Forma Pauperis (Doc. 4). In seeking leave to proceed in forma pauperis, Plaintiff used the court-approved Application to Proceed In Forma Pauperis for use by prisoners. On February 26, 2017, Plaintiff filed a Notice of Change of Address (Doc. 7) indicating he is no longer in custody.

Because Plaintiff has been released since he filed his prisoner Application to Proceed In Forma Pauperis, the Court will deny at most the Application to Proceed and will grant Plaintiff leave to file a non-prisoner application to proceed in forma pauperis. Because Plaintiff is no longer a prisoner, he is granted leave to proceed in forma pauperis, he only needs to satisfy the indigency requirements for a non-prisoner and, if he does so, he will not be required to pay the filing fees that he would have been required to

pay. Plaintiff indicates that he now resides in a halfway house in Lubbock, Texas.

1 pay as a prisoner.² Plaintiff will be given 30 days from the date this Order is filed to
2 either pay the \$350.00 filing fee and the \$50.00 administrative fee or file a non-prisoner
3 Application to Proceed in District Court Without Prepaying Fees or Costs using the form
4 included with this Order.

5 If Plaintiff fails to timely comply with every provision of this Order, including
6 these warnings, the Court may dismiss this action without further notice. *See Ferdik v.*
7 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action
8 for failure to comply with any order of the Court).

9 **IT IS ORDERED:**

10 (1) Plaintiff's Application to Proceed In Forma Pauperis (Doc. 4) is denied as
11 moot.

12 (2) Within 30 days of the date this Order is filed, Plaintiff must either pay the
13 \$350.00 filing fee and \$50.00 administrative fee or file a non-prisoner Application
14 to Proceed in District Court Without Prepaying Fees or Costs.

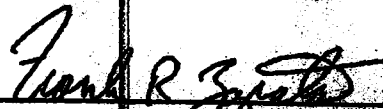
15 (3) If Plaintiff fails to either pay the \$350.00 filing fee and \$50.00
16 administrative fee or file a non-prisoner Application to Proceed in District Court Without
17 Prepaying Fees or Costs within 30 days, the Clerk of Court must enter a judgment of
18 dismissal of this action without prejudice and without further notice to Plaintiff and deny
19 any pending applications to proceed in forma pauperis.

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Case: 4:18-cv-00053-FRZ-PSOT Document #: 9-1 Date Filed: 05/11/2018 Page 3 of 8

1 (4) The Clerk of Court must mail Plaintiff a court-approved non-prisoner
2 Application to Proceed in District Court Without Prepaying Fees or Costs form.
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4 Dated this 11th day of May, 2018.
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8 Honorable Frank R. Zapata
9 Senior United States District Judge
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MIME-Version: 1.0 From: azddb_responses@azd.uscourts.gov To: azddb_nefs@localhost.localdomain
 Bcc: Message-Id: <17643588@azd.uscourts.gov> Subject: Activity in Case 4:18-cv-00053-FRZ-PSOT
 Rivera v. Federal Bureau of Prisons et al Order on Motion for Application for Leave to Proceed In Forma
 Pauperis Content-Type: text/html

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U.S. District Court
 DISTRICT OF ARIZONA

Notice of Electronic Filing

The following transaction was entered on 5/11/2018 at 1:16 PM MST and filed on 5/11/2018

Case Name: Rivera v. Federal Bureau of Prisons et al
 Case Number: 4:18-cv-00053-FRZ-PSOT

Event:

Document Number: 9

Docket Text

ORDER that Plaintiff's Application to Proceed In Forma Pauperis (Doc. 14) is denied as moot. Within 30 days of the date this Order is filed, Plaintiff must either pay the \$360.00 filing fee and \$50.00 administrative fee to file a fee a non-prosecution Application to Proceed in District Court Without Prepaying Fees of Court. If Plaintiff fails to otherwise pay the \$360.00 filing fee and \$50.00 administrative fee to file a non-prosecution Application to Proceed in District Court Without Prepaying Fees of Court within 30 days, the Clerk of Court must enter a judgment of dismissal of this action without prejudice and without further notice to Plaintiff and any pending motions must be deemed as moot. Signed by District Judge Frank J. Murphy on 5/11/2018. (JFM)

4:18-cv-00053-FRZ-PSOT Notice has been electronically submitted to the parties by the court. The parties will be notified by email if they have an email address on file with the court. If they do not, they will be notified by mail. If they are notified by mail, they will be notified by mail.

Case Number: 4:18-cv-00053-FRZ-PSOT

Case Name: Rivera v. Federal Bureau of Prisons et al

Case Number: 4:18-cv-00053-FRZ-PSOT

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Find an inmate.

Locate the whereabouts of a federal inmate incarcerated from 1982 to the present.

Find By Number

Find By Name

First

Middle

Last

Race

Age

Sex

Aaron

Rivera

4 Results for search Aaron Rivera

Clear Form

Search

Name	Register #	Age	Race	Sex	Release Date	Location
AARON RIVERA	00285-122	48	White	Male	08/16/2013	RELEASED
AARON RIVERA	15621-380	38	Black	Male	08/03/2018	Beaumont Medium FCI
AARON ANTONIO RIVERA	17531-179	48	White	Male	10/19/2007	RELEASED
AARON LUIS RIVERA	33302-057	24	Black	Male	02/03/2023	Yazoo City Medium FCI

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ATTACHMENT 3

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Find an inmate.

Locate the whereabouts of a federal inmate incarcerated from 1982 to the present.

Find By Number**Find By Name**

Type of Number

Number

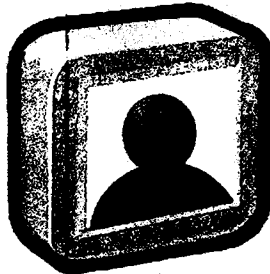
BOP Register Number 

15621-380

Search

Result using number 15621-380

Clear Form

**AARON RIVERA**

Register Number: 15621-380

Age: 38
 Race: Black
 Sex: Male

Located at: Beaumont Medium FCI

Release Date: 08/03/2018

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